INITIAL DECISION RELEASE NO. 417
ADMINISTRATIVE PROCEEDING
FILE NO. 3-14070

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of	:	
	:	INITIAL DECISION
THOMAS MICHAEL RITTWEGER	:	April 15, 2011

APPEARANCES: Daniel J. Wadley, Thomas M. Melton, and Karen L. Martinez for the Division of Enforcement, Securities and Exchange Commission

Thomas Michael Rittweger, pro se

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision bars Thomas Michael Rittweger (Rittweger) from association with any broker or dealer. He was previously enjoined from violating the antifraud provisions of the federal securities laws.

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Proceedings (OIP) on September 28, 2010, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). The undersigned granted the parties leave to file Motions for Summary Disposition at a November 15, 2010, prehearing conference, pursuant to 17 C.F.R. § 201.250(a). Thomas Michael Rittweger, Admin. Proc. No. 3-14070 (A.L.J. Nov. 15, 2010) (unpublished). The Division of Enforcement (Division) timely filed its Motion for Summary Disposition on January 26, 2011, and Rittweger timely filed his Response on February 22, 2011. The Division filed a Reply on March 7, 2011, and Rittweger filed a surreply on March 21, 2011. The administrative law judge is required by 17 C.F.R. § 201.250(b) to act "promptly" on a motion for summary disposition.

This Initial Decision is based on (1) the Division's January 26, 2011, Motion for Summary Disposition; (2) Rittweger's February 22, 2011, Response; (3) the Division's March 7, 2011, Reply; and (4) Rittweger's March 21, 2011, surreply. There is no genuine issue with

regard to any fact that is material to this proceeding. All material facts that concern the activities for which Rittweger was enjoined were decided against him in the civil case on which this proceeding is based. Any other facts in his pleadings have been taken as true, pursuant to 17 C.F.R. § 201.250(a). All arguments and proposed findings and conclusions that are inconsistent with this decision were considered and rejected.

B. Allegations and Arguments of the Parties

The OIP alleges that Rittweger was enjoined on September 13, 2010, from violating the antifraud provisions of the federal securities laws, in SEC v. Credit Bancorp, Ltd., No. 1:99-cv-11395 (S.D.N.Y.), based on his wrongdoing from March 1997 through November 17, 1999 (the relevant period). During some of that period, the OIP alleges, Rittweger was associated with a registered broker-dealer. The Division urges that he be barred from association with any broker-dealer. Rittweger argues that the Division has misinterpreted SEC v. Credit Bancorp, Ltd. He also argues that he was, in effect, not associated with a broker-dealer during the relevant period (which was not an issue in the injunctive proceeding).

C. Procedural Issues

1. Official Notice

Official Notice pursuant to 17 C.F.R. § 201.323 is taken of the docket report and the court's orders in SEC v. Credit Bancorp, Ltd., and United States v. Blech 1:02-cr-00122 (S.D.N.Y.).

2. Collateral Estoppel

Rittweger insinuates that Richard Blech was responsible for some of the wrongdoing underlying SEC v. Credit Bancorp, Ltd. However, as Rittweger acknowledges, the Commission does not permit a respondent to relitigate issues that were addressed in a previous civil proceeding against the respondent. See James E. Franklin, 91 SEC Docket 2708, 2713 (Oct. 12, 2007); John Francis D'Acquisto, 53 S.E.C. 440, 444 (1998); Demitrios Julius Shiva, 52 S.E.C. 1247, 1249 & nn.6-7 (1997). Nor does the pendency of an appeal preclude the Commission from action based on an injunction. See Franklin, 91 SEC Docket at 2714 n.15.

II. FINDINGS OF FACT

The following facts were found in the court's September 13, 2010, Opinion in SEC v. Credit Bancorp, Ltd. (Opinion)[1] or are based on the court's orders and docket report of that case or of United States v. Blech. The two cases are parallel civil and criminal cases arising out of the

[1] Rittweger charges the Division with misconduct, citing various statements in its pleadings that he engaged in a specified conduct when the court had used a passive construction to describe the conduct and did not specify any particular individual associated with Credit Bancorp, Ltd. The Findings of Fact herein, however, reference Rittweger as an actor only when the Opinion does.

same facts. Rittweger currently resides at FCI Fort Dix, Fort Dix, New Jersey, where he is serving a 135-month sentence that began January 27, 2006, following his conviction in Blech. Opinion at 5. Rittweger and four other defendants were indicted in Blech on January 31, 2002, and he was found guilty, after a twenty-four day jury trial, of securities fraud, wire fraud, racketeering, and other crimes.[2] Blech docket report, passim. In the civil case Rittweger was (and is) permanently enjoined from violating the antifraud provisions of the federal securities laws – Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; he was also ordered to disgorge $18,128,599.40 in ill-gotten gains plus prejudgment interest of $16,930,952.23. The court entered final judgment as to Rittweger on March 14, 2011.

The conduct that underlies Rittweger's injunction, which occurred between 1997 and November 1999, commenced when, in late 1997, he became a salaried employee of Credit Bancorp, Ltd. (CBL), as its managing director, North America; additionally, he became president of its affiliate Credit Bancorp & Co. and was held out to investors as a licensed securities broker. Opinion at 8-9. CBL ran a Ponzi scheme wherein investors were offered the opportunity to borrow at below market rates and earn dividends based on their transferring securities or other assets to CBL as collateral. Opinion at 5-6, 44. Rittweger frequently instructed investors to send their stock certificates, used as collateral, directly to his custody. Opinion at 10.

While CBL claimed to make money by engaging in a proprietary investment strategy, in reality investors' assets were routinely margined, pledged, hypothecated, and sold short without their knowledge, and the proceeds were used to fund a variety of different trading strategies, business expenses, personal expenses, and various business investments, which were largely unprofitable. Opinion at 8. Rittweger personally assured investors that their securities would not be transferred, disposed of, or otherwise encumbered. Opinion at 10. This was false; for example, one investor's shares were sold to meet a margin call. Opinion at 18, 21-24. Rittweger falsely told another customer that CBL had closed a $50 million deal with a large Japanese bank in order to obtain his business. Opinion at 20. Efforts, approved by Rittweger, to cover up the margining of investor assets included altering account statements. Opinion at 16. At least one such altered account statement was provided to a customer who requested information. Opinion at 30. Some customers who asked for their shares back did not receive them because the shares had been sold or encumbered. Opinion at 23-24, 27-28, 30.

Rittweger controlled a CBL checking account at Commerce Bank, which was used to receive his commission payments, compensate brokers, distribute dividends to customers, and fund office expenditures. Opinion at 11. The checking account showed $10,691,760 deposited through the period of his financial scheme. Id. After subtracting legitimate transfers, Rittweger had sole discretion over $8.4 million in the account, and bank statements indicated personal use of the funds, including numerous ATM transactions as well as purchases at various retailers. Opinion at 11-12. Rittweger continued self-dealing after a November 1999 court order freezing all CBL assets and his personal assets; he transferred assets totaling $2,653,063 to his wife and to unknown destinations in violation of the asset freeze. Opinion at 12, 14.

[2] In addition to imprisonment, the court ordered restitution of $18,129,899.40. That aspect of the judgment was docketed as satisfied on October 28, 2008.

Rittweger acknowledges that Credit Bancorp & Co. was briefly registered with the Commission as a broker-dealer and that he was appointed its president, but states that one of the first actions he took was to withdraw the broker-dealer registration. Response at 6-7.

III. CONCLUSIONS OF LAW

Rittweger has been permanently enjoined "from engaging in or continuing any conduct or practice in connection with any such activity" as a broker or dealer "or in connection with the purchase or sale of any security" within the meaning of Sections 15(b)(4)(C) and 15(b)(6)(A)(iii) of the Exchange Act. Additionally, he has been convicted of crimes that "involve[] the purchase or sale of any security, . . . misappropriation of funds," and wire fraud within the meaning of Sections 15(b)(4)(B) and 15(b)(6)(A)(ii) of the Exchange Act. Whether or not either Credit Bancorp & Co. or CBL was a registered broker-dealer during his association with those entities, Rittweger was held out to investors as a licensed securities broker, and the activities for which he was enjoined were in connection with the purchase or sale of securities – investors' collateral that was margined and even sold as a result of CBL's business activities. See Vladislav Steven Zubkis, 86 SEC Docket 2618, 2627 (Dec. 2, 2005), recon. denied, 87 SEC Docket 2584 (Apr. 13, 2006) (unregistered associated person of an unregistered broker-dealer barred from association with a broker or dealer).

IV. SANCTION

The Division requests a broker-dealer bar. As discussed below, Rittweger will be barred from association with any broker-dealer because of the seriousness of his violation, taking account of the facts and circumstances of his conduct.

A. Sanction Considerations

The Commission determines sanctions pursuant to a public interest standard. See Section 15(b)(6) of the Exchange Act. The Commission considers factors including:

> the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979) (quoting SEC v. Blatt, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)). The Commission also considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation. Marshall E. Melton, 56 S.E.C. 695, 698 (2003). Additionally, the Commission considers the extent to which the sanction will have a deterrent effect. See Schield Mgmt. Co., 87 SEC Docket 848, 862 & n.46 (Jan. 31, 2006).

In proceedings based on an injunction, the Commission examines the facts and circumstances underlying the injunction in determining the public interest. See Melton, 56 S.E.C. at 698. "An injunction, by its very nature, is predicated on conduct that . . . violate[s] laws, rules or regulations." Id. at 709. The Commission considers an antifraud injunction to be particularly serious. Id. at 710. The public interest requires a severe sanction when a respondent's past misconduct involves fraud because opportunities for dishonesty recur constantly in the securities business. See Richard C. Spangler, Inc., 46 S.E.C. 238, 252 (1976).

B. Sanctions

Rittweger's conduct was egregious and recurrent. At a minimum, a reckless degree of scienter is a necessary element of his violations of the antifraud provisions of the Exchange Act. Rittweger has not given assurances against future violations or recognition of the wrongful nature of his conduct. Rather, he maintains that he has been the victim, not the perpetrator of wrongdoing.

Rittweger's previous occupation, if he were allowed to continue it in the future, would present opportunities for future violations. Rittweger's violations are not currently recent, but were recent when SEC v. Credit Bancorp, Ltd., was filed in 1999 and when he was indicted in Blech in January 2002. The opportunity for further violations has been circumscribed since his incarceration started in January 2006. The degree of harm to investors and the marketplace is quantified in the restitution of $18,129,899.40 that the court ordered in Blech. Further, as the Commission has often emphasized, the public interest determination extends beyond consideration of the particular investors affected by a respondent's conduct to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally. See Christopher A. Lowry, 55 S.E.C. 1133, 1145 (2002), aff'd, 340 F.3d 501 (8th Cir. 2003); Arthur Lipper Corp., 46 S.E.C. 78, 100 (1975). A broker-dealer bar is also necessary for the purpose of deterrence. Id.

V. ORDER

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(b), THOMAS MICHAEL RITTWEGER IS BARRED from associating with any broker or dealer.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision.[3] A party may also file a motion to correct a manifest error of

[3] Rittweger requests that his filings dated February 9 and March 14, 2011, be considered a petition for review if the Initial Decision is adverse to him. The basis for his preemptive petition for review is the delay, due to his incarceration, in receiving documents that are mailed to him. Thus, he reasons, the time to file a petition could expire if he waited until after receiving the Initial Decision before sending a petition to the Commission. Rittweger made a similar request in connection with a motion for reduced sentence in the criminal case. That request was denied. United States v. Rittweger, 02-cr-122-JGK (S.D.N.Y. Nov. 2, 2009).

fact within ten days of the Initial Decision, pursuant to Rule 111 of the Commission's Rules of Practice, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or a motion to correct a manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

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Carol Fox Foelak
Administrative Law Judge